

EXHIBIT J (REDACTED)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re:

Case No:

RESIDENTIAL CAPITAL, LLC, et. al,

12-12020 (MG)

Debtors.

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VIDEOTAPE DEPOSITION OF JEFFREY CANCELLIERI

New York, New York

November 14, 2012

2:03 p.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27647-B

1 JEFF CANCELLIERI

2 Q. Okay. Who do you believe
3 engaged in that process?

4 A. I don't know who performed those
5 functions.

6 Q. How often did they audit second
7 mortgage loans?

8 A. I don't know. I believe it was
9 monthly, but I don't know for sure. You'd
10 have to talk to the folks in the quality
11 assurance area.

12 Q. Do you know how many loans they
13 audited on a monthly basis?

14 A. I do not.

15 Q. Did you ever heard of the term
16 "target audits" within RFC?

17 A. I have not.

18 Q. Do you know whether target
19 audits were done for second mortgage
20 loans?

21 A. I do not.

22 Q. Were you aware, Mr. Cancelliere,
23 that filter rules with respect to the
24 stated income requirements for loans were,
25 fluctuated within ResCap when they were

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JEFF CANCELLIERI

looking at loans?

MR. RAINS: Objection, assumes
facts not in evidence.

A. I was not.

Q. Now, Mr. Cancelliere, when you
were calculating reserves with respect to
potential ResCap exposure for inclusion in
public disclosures, did you ever set a
reserve for RMBS liability in excess of a
billion dollars?

MR. RAINS: Objection, assumes
facts not in evidence. Calls for
speculation.

MR. NATBONY: It has no fact --
well, you stated your objection.

Q. Go ahead.

A. Can you repeat the question.

Q. Sure. When you were calculating
reserves with respect to potential ResCap
exposure, you did you ever set a reserve
for RMBS liability in excess of a billion
dollars?

MR. RAINS: Same objections.

A. No.

1 JEFF CANCELLIERI

2 Q. When you were calculating
3 reserves with respect to potential ResCap
4 exposure, did you ever set a reserve for
5 RMBS liability in the range of \$8 billion?

6 MR. RAINS: Objection, assumes
7 facts not in evidence.

8 A. No.

9 Q. In fact, Mr. Cancelliere, your
10 reserve numbers were in the seven and \$800
11 million range, weren't they?

12 MR. RAINS: By "you," you mean
13 ResCap, or do you mean him personally?

14 Q. Well, Mr. Cancelliere --

15 MR. NATBONY: I'll withdraw the
16 question.

17 Q. Mr. Cancelliere, it was your
18 group that was recommending reserves,
19 correct?

20 A. Yes.

21 Q. So my question is, your group,
22 in fact, recommended, in the third quarter
23 of -- fourth quarter of 2011, let's say,
24 reserves for RMBS liability of under a
25 billion dollars; isn't that correct?

1 JEFF CANCELLIERI

2 A. Yes.

3 Q. Let me just show you something
4 that I'm going to mark as Exhibit 111.

5 (9019 Exhibit 111, 4/19/12
6 reminder document about Kathy Patrick
7 prep meeting, with attachments, Bates
8 RC 9019 00047801-982, marked for
9 identification, as of this date.)

10 Q. I know you testified earlier --
11 MR. RAINS: Give the witness a
12 second to look at this document.

13 Thanks.

14 This is 111?

15 MR. NATBONY: Yes.

16 MR. RAINS: Thank you.

17 Q. I know you testified earlier,
18 Mr. Cancelliere, that you did not attend
19 any meeting with Kathy Patrick. I'm just
20 showing you this document.

21 Does this appear to be an
22 indication of a reminder for prep for a
23 Kathy Patrick meeting, that was sent to
24 you on or about April 18th of 2012?

25 A. Yes. This is a meeting request

1 JEFF CANCELLIERI

2 for a prep for a discussion with Kathy
3 Patrick.

4 Q. Do you recall participating in
5 some sort of preparation for a Kathy
6 Patrick meeting in April of 2012?

7 A. Yes.

8 Q. What do you recall about that
9 meeting?

10 A. I believe it was high level
11 discussion on the deal information we may
12 have received from her and the topics that
13 they were going to discuss while meeting
14 with her.

15 Q. Other than your characterization
16 of high level discussions, do you recall
17 anything specific that was discussed at
18 this preparatory meeting for Kathy
19 Patrick's meeting?

20 A. I do not know.

21 Q. And looking at what's been
22 marked as Exhibit 111, does that refresh
23 your memory as to whether you, in fact,
24 attended a subsequent meeting with Kathy
25 Patrick?

1 JEFF CANCELLIERI

2 A. No. I attended the prep
3 meeting. I don't recall actually
4 attending the meeting with Kathy Patrick.

5 Q. Do you recall being given any
6 assignments at this preparatory meeting?

7 A. Only to provide similar
8 information that I had provided to Tim
9 Devine in the past, related to the deal
10 level that Kathy Patrick was believed to
11 represent and general ranges of exposure
12 for counsel's use in discussions with
13 Kathy Patrick.

14 Q. Now, you testified earlier that
15 you provided to someone a range of
16 lifetime losses and defect rate.

17 Do you recall that?

18 A. I did not provide a range of
19 lifetime losses, I provided a single
20 expected or estimated lifetime loss. I
21 provided a range of potential exposure,
22 related to the estimated lifetime loss.

23 Q. My apologies. You are correct,
24 and I stand corrected.

25 Who did you provide that

1 JEFF CANCELLIERI

2 Q. I'm sorry. I read back, looked
3 at your answer and I'm not sure I
4 understand it so maybe I can ask it a
5 different way. What, if any, action did
6 you take when learning of the \$10 billion
7 and 22 percent numbers?

8 A. Ultimately I ended up having a
9 conversation with Kathy Patrick discussing
10 the assumptions that they use in order to
11 calculate their allowed claim number for
12 comparison to our assumptions,
13 specifically their estimated lifetime loss
14 levels, default rates, severity rates.

15 Q. Now, as to the \$10 billion
16 number, were you aware of any concern that
17 was expressed internally at ResCap that
18 such a number might be seen as raising
19 securities disclosure risks in view of the
20 past 10-Q statements?

21 A. I am not aware.

22 Q. You're not aware of that today?

23 A. I don't recall that, no.

24 Q. You weren't aware of it back
25 then?

1 JEFF CANCELLIERI

2 A. No. I don't recall.

3 Q. You don't -- you don't recall

4 Mr. Devine raising that issue?

5 A. I don't.

6 Q. Did you have a concern back in
7 April or May of 2012 that agreeing to a
8 \$10 billion number might be seen as
9 raising securities disclosure risks in
10 view of the past 10-Q statements?

11 A. No. My only concern was the
12 default and loss assumptions that were
13 being calculated by the counterparty in
14 assessing their -- their allowed claim
15 amount.

16 Q. You thought the 22 percent
17 defect rate was too high, didn't you?

18 MR. RAINS: Objection.

19 Misstates the witness's testimony.

20 A. It's not my place in settlement
21 negotiations to have an opinion on what
22 numbers. The right number I leave that up
23 to the lawyers to work through the
24 potential risks of any of the settlement
25 negotiations and inputs into their

1 JEFF CANCELLIERI

2 discussions.

3 Q. I appreciate that. But you
4 previously testified you had discussions
5 with Kathy Patrick about her assumptions,
6 correct?

7 A. That's correct.

8 Q. Did you challenge the 22 percent
9 defect rate that Kathy Patrick was using
10 in that discussion?

11 A. I challenged all of her
12 assumptions.

13 Q. What assumptions did you
14 challenge?

15 A. I challenged their use of role
16 rates for projected defaults, which were
17 based on history. I challenged their use
18 of an average severity rate, historical
19 severity rate for future losses. And as
20 part of the discussion around how they
21 were using the Bank of America defect rate
22 I guess as some level of guide, I didn't
23 get into specifics, but the fact that it
24 was based on an adverse selection of
25 loans.

1 JEFF CANCELLIERI

2 Q. How was it based on an adverse
3 selection of loans?

4 MR. RAINS: Objection. Vague
5 and ambiguous.

6 A. Based on my discussion with her
7 she mentioned that the 36 percent that was
8 used in the Bank of America settlement was
9 provided to her based on a review that
10 Freddie Mac did of Countrywide's loans
11 based on adverse selection. Adverse
12 selection being loans that were
13 nonperforming.

14 Q. And in fact the defect rates
15 that ResCap was using was based on a
16 selection of loans that is only loans that
17 were sought to be repurchased, correct?

18 A. The defect rates were used as a
19 guide. Specific defect rates were not
20 used for any specific deals. They were
21 used as a guide to create the range which
22 was provided to our legal experts during
23 our settlement negotiations.

24 Q. I understand that it was used at
25 a guide. But you were complaining to

1 JEFF CANCELLIERI

2 Ms. Patrick that Bank of America's defect
3 rate was based on an adverse sample,
4 correct?

5 A. I wouldn't categorize it as
6 complaining. I was challenging.

7 Q. Challenging that their defect
8 rate was based on an adverse sample,
9 correct?

10 A. Challenging that it was based on
11 an adverse sample in order to assist our
12 legal experts to give them additional
13 guidelines on information that they can
14 use during their settlement negotiations.

15 Q. And in fact the defect rates
16 that ResCap was using as a guide in the
17 settlement discussions were based on only
18 loans that were either sought to be
19 repurchased or independently audited
20 within ResCap, correct?

21 A. Can you repeat the question?

22 Q. And in fact the defect rates
23 that ResCap was using as a guide in the
24 settlement discussions were based on only
25 loans that were either sought to be

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JEFF CANCELLIERI

repurchased or independently audited
within ResCap, correct?

MR. RAINS: Objection. Asked
and answered.

A. The defect rate ranges were used
as a guide to create ranges of exposure in
order for our legal experts to have tools
during our settlement negotiations.

Q. And those guides were based on
only loans that were either sought to be
repurchased or independently audited
within ResCap, right?

MR. RAINS: Objection. Asked
and answered.

MR. MOLONEY: No he didn't
answer the question.

MR. RAINS: He answered it 20
times today already.

A. The defect rates used were
guides.

MR. RAINS: He's asking you
where you got the defect rates.

A. The defect rates came from the
quality assurance group where they would

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JEFF CANCELLIERI

Q. Now this chart in Exhibit 60 is
numbered along the left side lines 1
through 15, correct?

A. Correct. Looks like there's a
number missing, but yes, you're correct.

Q. That's my next question. It
goes from lines 1 through 6 but then
line 6 skips to line 13; is that right?

A. That is right.

Q. So it looks like there is six
lines missing from this chart, since there
are no lines 7, 8, 9, 10, 11 or 12; is
that right?

A. That appears to be the case.

Q. Why is that?

A. Most likely when this was
created, it was using a format of a
different file, and I deleted the rows
from the other file format and never
updated the actual numbering on the left
side of this file.

Q. Do you recall what was contained
in those six lines that you deleted?

A. I don't. I don't think it had

1 JEFF CANCELLIERI

2 anything to do with this particular
3 analysis. It was just the shell of the
4 box that you see the information contained
5 in.

6 Q. So you made the decision not
7 to -- excuse me, you made the decision to
8 delete whatever those six lines were, in
9 connection with your preparation of this
10 chart?

11 A. From whatever format those lines
12 were for, yes; and never refreshed,
13 apparently never refreshed the actual
14 numbering.

15 Q. Now, turning back to what is
16 included on this chart and what was
17 presented to the board, I would like to
18 call your attention to line 13 of this
19 chart. This indicates that the ResCap
20 settlement was for \$8.7 billion, correct?

21 A. Correct.

22 Q. With a 19.7 -- 19.72 percent
23 defect, correct?

24 A. Correct.

25 Q. And in the context of this

1 JEFF CANCELLIERI

2 chart, would you please explain what
3 "defect" means?

4 A. In this instance, defect would
5 be -- the 19.72 percent was a backed-into
6 number, based on our estimated lifetime
7 losses, to get to the \$8.7 billion. A
8 defect would be a potential breach of a
9 representation and warranty.

10 Q. Now, was there any discussion at
11 the board meeting about the 19.72 percent
12 defect?

13 A. I don't recall specifics of what
14 was discussed. There was a lot going on
15 at that point. I'm not sure exactly how
16 much detail we went into regarding that
17 number.

18 Q. Do you recall any detail about
19 that number being presented to the board?

20 A. I recall the number being
21 presented, but I don't recall any specific
22 discussions surrounding that number.

23 Q. Do you recall any questions
24 asked surrounding that number?

25 A. I don't.

1 JEFF CANCELLIERI

2 Q. Now, just under the 19.72
3 defect, the very next line, line 14
4 states, "A Lehman claim amount with a
5 35 percent defect rate," right?

6 A. Correct.

7 Q. And then the next line after
8 that, line 15, states, "BofA baseline,
9 36 percent defect," correct?

10 A. Correct.

11 Q. Now, starting with that line 15,
12 "BofA baseline, 36 percent defect," was
13 there any discussion at the board meeting
14 about the 36 percent defect?

15 A. From what I can recall the
16 meeting, it was put in there and described
17 as a comparative point to the ResCap
18 settlement.

19 Q. How was it described as a
20 comparative point?

21 A. Using the 30 percent defect from
22 the BofA baseline settlement, compared to
23 where ResCap was settling, was, I guess, a
24 piece of information that was provided, at
25 the direction of our legal counsel, to

1 JEFF CANCELLIERI

2 provide our settlement in context with
3 other settlements in the market.

4 Q. Who directed you to provide that
5 context and that comparison?

6 A. Gary Lee.

7 Q. And did Gary Lee direct you to
8 include that figure, that BofA baseline
9 36 percent defect, in this chart?

10 A. Yes.

11 Q. Do you recall any questions
12 being asked about the 36 percent defect at
13 the board meeting?

14 A. I don't.

15 Q. Is it fair to say the board
16 accepted this figure at face value?

17 MR. RAINS: Objection, calls for
18 speculation.

19 A. I don't know what the board's
20 thought process was.

21 Q. Well, to your knowledge, did you
22 or anyone else do any independent
23 examination of the 36 percent defect rate?

24 A. The only discussions I had on
25 the 36 percent defect rate were the

1 JEFF CANCELLIERI

2 initial conversations I had with Kathy
3 Patrick on the assumptions they were
4 applying to our portfolio.

5 Q. And that was the conversation
6 you testified to earlier, on which you
7 challenged those assumptions?

8 A. That's correct.

9 Q. Now, did you or anyone else
10 reach out to Bank of America to confirm
11 that figure of 36 percent?

12 A. I did not.

13 Q. So you just relied on the figure
14 that Kathy Patrick provided?

15 A. I relied on the information that
16 my legal counsel provided to me.

17 Q. And it was your understanding
18 that the 36 percent stemmed from Kathy
19 Patrick?

20 A. Correct.

21 Q. Now, I have the same question
22 with respect to line 14, that's the line
23 that says "Lehman claim 35 percent
24 defect."

25 Was there any discussion at the

1 JEFF CANCELLIERI

2 board meeting about the 35 percent defect?

3 A. Similar discussion, as just a
4 comparative point to the BofA 36 percent.

5 Q. And, again, did Gary Lee direct
6 you to include the Lehman claim amount
7 35 percent defect in this chart?

8 A. Yes.

9 Q. Where did the Lehman figure come
10 from, to your knowledge?

11 A. To my knowledge, it came from
12 legal documents that were a part of the
13 Lehman bankruptcy process.

14 Q. And to your knowledge, did you
15 or anyone else do any independent
16 examination of the 35 percent defect rate
17 for Lehman?

18 A. I did not.

19 Q. Now, with respect to this chart
20 that you prepared in Exhibit 60, that was
21 presented to the board, just under the
22 chart in small fonts there's a list of
23 nine footnotes called Keynotes,
24 accompanying the chart; is that correct?

25 A. That's correct.

1 JEFF CANCELLIERI

2 Q. Did you prepare these notes to
3 the chart?

4 A. That's correct.

5 Q. Did you draft the language in
6 these notes?

7 A. I drafted a portion of the
8 language, with assistance from our legal
9 team.

10 Q. Do you recall any discussion at
11 the board meeting about these footnotes?

12 A. I don't recall any discussions,
13 specifically, about any one footnote.

14 Q. Any questions asked about any of
15 the footnotes?

16 A. Not that I can recall.

17 Q. Okay. Let's talk about key
18 footnote number 3 in Exhibit 60. Note 3
19 states, "ResCap historical post-fund-audit
20 defect rate range is nine percent to
21 29 percent, varying by product/vintage,
22 with the weighted average defect rate at
23 19.3 percent."

24 Did I read that correctly?

25 A. Yes.

JEFF CANCELLIERI

Q. Now, could you please explain
what note 3 means?

A.

[REDACTED]

Q. Now, just turning back to an
exhibit that you were previously shown.

1 JEFF CANCELLIERI

2 It's the exhibit marked 39.

3 A. Yes.

4 Q. Now, this is a chart, again,
5 followed by 100 pages of a spreadsheet.
6 For the sake of efficiency, I'm only going
7 to ask you about the first page. This
8 chart called "PLS Summary" -- excuse me,
9 "PLS Demand Data Summary," which,
10 according to the first line, purports to
11 summarize put-back demands received late
12 2007 to May 2012, correct?

13 A. Correct.

14 Q. To your knowledge, were the
15 demands summarized in Exhibit 39 included
16 in the defect rate range in keynote 3 of
17 Exhibit 60?

18 A. The only way there would be an
19 overlap would be is if, in the Exhibit 39,
20 there were loans that were part of the
21 post-fund-audit process that were
22 ultimately identified as a breach and
23 repurchased, or I should say they were
24 identified via the post-fund-audit process
25 that were repurchased, would have ended up

1 JEFF CANCELLIERI

2 in Exhibit 39.

3 The post-fund-audit defect rates
4 that are noted in that footnote 3 are from
5 the quality assurance group's report
6 around their audit rates.

7 Q. Now, turning back to the
8 footnotes in Exhibit 60 that were shown to
9 the board. Drawing your attention to
10 keynote 6, note 6 states, "There could be
11 amounts conceded, if the true defect rate
12 is below the 19.72 percent, based on
13 actual loan file reviews and application
14 of litigation defenses."

15 Now, it's fair to say that the
16 19.72 defect rate underlying the
17 \$8.7 billion settlement was derived
18 without conducting a loan-by-loan
19 analysis, correct?

20 A. Correct.

21 Q. Without conducting a review of
22 the loan files, correct?

23 A. That's correct.

24 Q. And without taking into account
25 potential litigation defenses, correct?

1 JEFF CANCELLIERI

2 A. That's correct.

3 Q. And with respect to the
4 statement presented to the board in
5 footnote 3 that there could be amounts
6 conceded, if the true defect rate is below
7 the 19. -- 19.72 percent, what was your
8 understanding of that?

9 A. That was language that was
10 developed by legal counsel, understanding
11 being if you were to go through the full
12 litigation process and full repurchase
13 claim process to calculate true repurchase
14 or defect rates within each individual
15 trust, you may come out to a number that
16 is different than the 19.72 percent.

17 Q. And in fact, this suggests that
18 the true defect rate was lower than
19 19.27 percent, correct?

20 A. Can you repeat the question.

21 (Record read.)

22 A. I wouldn't say it suggested it
23 is lower. What it's saying is, if you
24 were going through the full process of
25 reviewing all the loans within each trust,

1 JEFF CANCELLIERI

2 based on the reps and warranties in those
3 trusts, you come out to a number that's
4 different from the 19.72 percent.

5 Q. But footnote 6 states, "If the
6 true defect rate is below the
7 19.72 percent," correct?

8 MR. RAINS: It says, "If the
9 true defect rate is below."

10 Q. It says, "There could be amounts
11 conceded if the true defect rate is below
12 the 19.72 percent, based on actual loan
13 file reviews and application of litigation
14 defenses," correct?

15 A. Correct. It says if it were to
16 be below that number.

17 Q. Now, I just want to make sure I
18 understand footnote 6.

19 Who would be conceding what?

20 A. I don't know, specifically, who
21 would be conceding. The comment is noted
22 to say that the settlement number could be
23 below the 8.7 billion, if the true defect
24 rate is below the 19.72 percent.

25 Q. Now, do you recall any board

1 JEFF CANCELLIERI

2 members asking about footnote 6?

3 A. I don't recall that.

4 Q. And again, after this
5 presentation in Exhibit 60 was made at the
6 board meeting on May 9th, the board
7 approved the \$8.7 million settlement,
8 correct?

9 A. That's my understanding.

10 Q. Now, Mr. Cancelliere, are you
11 aware that you've been identified as a
12 trial witness for the debtors in this
13 proceeding?

14 A. Yes.

15 Q. And on what subject or subjects
16 will you be testifying?

17 A. My understanding is specifically
18 to the estimated lifetime losses and the
19 analysis that I have provided to our legal
20 experts during their settlement
21 negotiations.

22 Q. And what is the substance of
23 your testimony concerning the estimates
24 that you provided during the settlement
25 negotiations?

1 JEFF CANCELLIERI

2 MR. RAINS: Objection, calls for
3 speculation.

4 A. I'm not sure what it's going to
5 include.

6 MS. KATZ: Thank you,
7 Mr. Cancelliere, I don't have any
8 further questions.

9 EXAMINATION BY

10 MR. DAILEY:

11 Q. Good evening. My name is Mike
12 Dailey. I represent FGIC in these
13 proceedings.

14 Mr. Cancelliere, you mentioned
15 that the defect rate of 19.72 percent was
16 backed into; is that correct?

17 A. That's correct.

18 Q. Who told you to back into that
19 amount?

20 A. Legal counsel.

21 Q. Who in legal counsel?

22 A. Gary Lee.

23 Q. Did Tim Devine ever tell you to
24 back into that amount, sir?

25 A. Not that I'm aware of.

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JEFF CANCELLIERI

Q. Is there anything -- let's do
this. Can you mark --

MR. RAINS: So we think it's
117.

(9019 Exhibit 117, 5/7/12
e-mail, Bates RC901900060360, marked
for identification, as of this date.)

Q. Mr. Cancelliere, I'm handing you
what has been marked as deposition
Exhibit 117.

MR. RAINS: Thank you.

Q. It's an e-mail from you to Tim
Devine, responding to an earlier e-mail
sent by Tim Devine.

Do you recognize this the
document?

A. I recognize the e-mail, yes.

Q. Do you recall receiving this
e-mail from Tim Devine?

A. Vaguely, yes.

Q. And this e-mail is dated
May 9th, at 5:50 a.m., correct?

A. Correct.

Q. The subject line is "Defect

1 JEFF CANCELLIERI

2 Rate," correct?

3 A. Correct.

4 Q. And in that, he asks you a
5 question, doesn't he?

6 A. He does.

7 Q. And that question is, "What is
8 the defect rate at 8.7 billion, according
9 to her severities, et cetera, and
10 according to ours? Thanks, Tim."

11 Is that a fair reading, sir?

12 A. Yes.

13 Q. And you understood that to mean,
14 "her severities" meaning Kathy Patrick,
15 correct?

16 A. Correct.

17 Q. And you respond over about an
18 hour later, correct?

19 A. Yes.

20 Q. And you say that, "Using our
21 44.1 billion losses, the defect rate would
22 be about 19.7"; is that correct?

23 A. That's correct.

24 Q. And that 44.1 billion losses,
25 that's the estimated lifetime loss that

1 JEFF CANCELLIERI

2 you've calculated, correct?

3 A. Correct.

4 Q. And that's the number that you
5 said never changed during your entire --
6 during your entire analysis, correct?

7 A. Correct.

8 Q. But Kathy Patrick calculated a
9 separate lifetime loss, correct?

10 A. Yes.

11 Q. And her loss method was
12 \$48.7 billion, correct?

13 A. Yes.

14 Q. So that number wasn't actually a
15 fixed number, was it?

16 MR. RAINS: Which number?

17 A. Which number?

18 Q. Pardon. The \$44.1 billion loss
19 was not a fixed number, was it?

20 A. My 44.1 billion was a fixed
21 number.

22 Q. And using that number, you
23 backed into a defect rate of 19.7 percent,
24 approximately, correct?

25 A. Approximately, yes.

1 JEFF CANCELLIERI

2 Q. And that was done at the
3 direction of Timothy Devine; is that
4 correct?

5 A. That appears to be correct.

6 Q. And that 19.7 approximate
7 number, that actually turned out to be
8 19.72 percent, when you got -- when you
9 don't round, correct?

10 A. I would assume so, yes. The
11 19.72 is what showed up in the board
12 presentation.

13 Q. So that same defect rate is
14 what's shown up in the board presentation,
15 correct?

16 A. Correct.

17 Q. And using -- but was the board
18 ever told that, using Kathy Patrick's
19 analysis, you could come up with a
20 17.9 percent defect rate?

21 A. Not that I'm aware of.

22 Q. Was the board ever told that a
23 two percent difference in the defect rate
24 is about a billion dollar difference?

25 A. Not that I'm aware of.

1 JEFF CANCELLIERI

2 Q. So it wasn't actually to
3 calculate the footprint, it was now to
4 refresh the analysis, correct?

5 A. Correct.

6 Q. And that was being done by the
7 direct -- at the direction of Tim Devine,
8 yes?

9 A. It was at the direction of Tim
10 Devine and Gary Lee. On the second page
11 of this e-mail, Gary asked Tim Devine if
12 he could speak to Kathy Patrick.

13 Q. And then Tim Devine responds to
14 you, and says he volunteered you, correct?

15 A. I would say he volunteered John
16 Ruckdaschel and myself to work on
17 refreshing the footprint.

18 Q. I just have a few more
19 questions.

20 During the May 9th board meeting
21 in which the settlement, the \$8.7 billion
22 settlement was agreed upon, Mr. Marano
23 asked for additional information, didn't
24 he?

25 A. I don't recall.

1 JEFF CANCELLIERI

2 Q. If you refer to deposition
3 Exhibit 61 in your pile. It's the minutes
4 from the board meeting that day. If you
5 notice at the bottom of the first page,
6 the second-to-last paragraph, Mr. Renzi
7 reviewed and discussed the key assumptions
8 and preliminary economic recovery analysis
9 of preliminary agreements reached in
10 certain constituencies. During that
11 discussion Mr. Marano requested a report
12 with separate line I amounts be prepared
13 to provide the board with additional
14 details on the settlements."

15 Do you recall now that
16 Mr. Marano asked for additional
17 information regarding the proposed
18 settlement?

19 A. I recall that was a question
20 directed to Mr. Renzi.

21 Q. And do you recall, though, that
22 at the conclusion of the board meeting,
23 the board voted in favor of that
24 settlement?

25 A. I believe so.

1 JEFF CANCELLIERI

2 Q. And that was at the board
3 meeting before, before it concluded at
4 4:00 p.m., correct?

5 A. As far as I can recall.

6 Q. Do you recall if Mr. Marano ever
7 received any additional information?

8 A. I don't recall.

9 Q. Just give me one moment.

10 MR. DAILEY: That's all I have
11 thank you.

12 EXAMINATION BY

13 MR. DOLAN:

14 Q. Mr. Cancelliere, I'm Matt Dolan,
15 from Cleary Gottlieb, on behalf of
16 Wilmington Trust.

17 You previously testified that
18 you had a call with Kathy Patrick on
19 May 8th, during which you challenged a
20 number of assumptions that she had,
21 related to the defect rate?

22 MR. RAINS: Misstates the
23 witness's testimony.

24 A. I had a conversation with her
25 around their assumptions and discussed and

1 JEFF CANCELLIERI

2 challenged all of their assumptions.

3 Q. And you also discussed and
4 challenged her use of the 36 percent Bank
5 of America default -- defect rate?

6 A. In some form, yes. And used
7 that information to provide our legal
8 team, who was working through the
9 negotiations, to have discussions with
10 Kathy Patrick.

11 Q. So you relayed to the legal team
12 that you had challenged her use of that?

13 A. I had relayed to the legal team
14 the items where I believe we could
15 challenge her assumptions.

16 Q. And included in that list of
17 items was the 36 percent?

18 A. It was all of her assumptions,
19 yes.

20 Q. Was anyone else on that call,
21 besides you and Ms. Patrick?

22 A. I believe David Sheeren, from
23 Kathy Patrick's side, was on the call as
24 well.

25 Q. Do you know why you were on that

1 JEFF CANCELLIERI

2 call?

3 A. Gary Lee had asked me to talk to
4 Kathy about her specific assumptions, to
5 get an idea of their calculated numbers.

6 Q. And after that call, you relayed
7 to Gary Lee and others on the legal team
8 your concerns you had with her
9 assumptions?

10 A. Yes. I relayed to Gary Lee her
11 assumptions and potential concerns with
12 her assumptions.

13 Q. And then you were shown a second
14 ago Exhibit 60, which is the board
15 presentation from May 9th.

16 Do you recall that?

17 A. I do recall that.

18 Q. And that presentation includes
19 the 36 percent Bank of America default
20 rate?

21 Do you recall that?

22 A. It includes, yes, the baseline
23 Bank of America defect rate.

24 Q. Was the board of directors of
25 ResCap ever informed that you had raised

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JEFF CANCELLIERI

concerns about using that 36 percent
defect rate?

A. I don't know.

Q. But no -- you don't recall from
that --

A. I don't recall from that
meeting.

Q. Nothing, there was no discussion
of that?

MR. RAINS: He says he doesn't
recall.

A. I don't recall.

Q. But as you previously testified,
that 36 percent was used as a comparison.
It was presented to the board as a
comparison to the 19.72 defect rate?

A. That is correct, at the
direction of our legal counsel.

MR. DOLAN: I don't have
anything else. Thank you,
Mr. Cancelliere.

MR. RAINS: Any other takers?

MR. SHEEREN: David Sheeren from
Gibbs & Bruns. Can we just take a

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JEFF CANCELLIERI

quick break?

MR. RAINS: Sure. We are going
to count it against your time, though.

Okay, what do we have, 10 more
minutes? 15 minutes, I guess.

THE VIDEOGRAPHER: The time is
6:21 p.m., and we are off the record.

(Whereupon, there is a recess in
the proceedings.)

THE VIDEOGRAPHER: The time is
6:26 p.m., and we are back on the
record.

MR. RAINS: No further
questions. Thank you.

THE VIDEOGRAPHER: The time is
6:26 p.m., and this marks the end of
today's videotaped deposition.

(Time noted: 6:26 p.m.)

1
2 STATE OF _____)
3) :ss
4 COUNTY OF _____)
5
6

7 I, JEFFREY CANCELLIERI, the witness
8 herein, having read the foregoing
9 testimony of the pages of this deposition,
10 do hereby certify it to be a true and
11 correct transcript, subject to the
12 corrections, if any, shown on the attached
13 page.
14

15 _____
16 JEFFREY CANCELLIERI
17
18
19

20 Sworn and subscribed to before
21 me, this _____ day of
22 _____, 2012.
23

24 _____
25 Notary Public

C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, ERICA L. RUGGIERI, RPR and a
Notary Public within and for the State
of New York, do hereby certify:

That I reported the proceedings
in the within-entitled matter, and
that the within transcript is a true
record of such proceedings.

I further certify that I am not
related by blood or marriage, to any
of the parties in this matter and
that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 15th day
of November, 2012.

ERICA L. RUGGIERI, RPR